

# 2018 Montana's Natural Resource Damage Program

ENVIRONMENTAL QUALITY  
COUNCIL 2017-18

July 26, 2018

Exhibit 13

July 26, 2018 Environmental  
Quality Council  
Presentation:  
NRD Litigation, Settlements  
and Restoration Projects

Milltown 2017

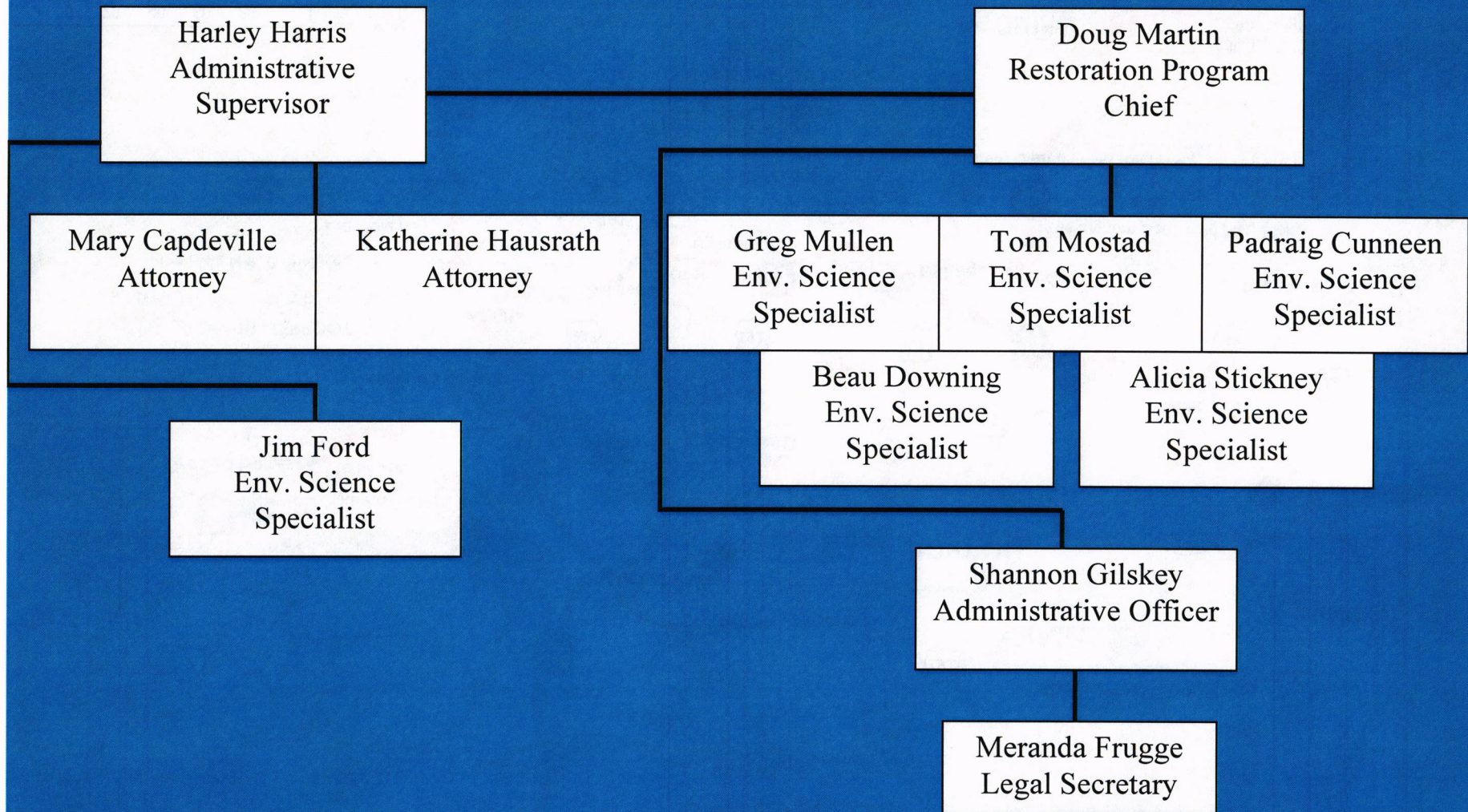


# Montana's NRD Program

- 1990, Governor establishes the NRD Program (NRDP).
  - Program represents State and FWP, DEQ, and DNRC.
  - Governor's NRD Policy Committee (Gov. COS, Directors, and AG) provides NRD Program guidance.
- The Program has 12 FTEs
  - 2 Administrative
  - 3 Attorneys
  - 7 Technical (1 located in Butte)
- NRDP is administratively attached to MDOJ
- 1991, the Program was funded by the Legislature with \$5.0 million, in the form of a loan, to pursue the ARCO and other NRD litigation.
  - Every two years, through 2007, additional funding authorized.
- As of 2009, all past appropriations paid back to the General and Coal Tax Trust Funds out of settlements, about \$20 million.
- NRDP is now a funded off-budget



## Natural Resource Damage Program Employees





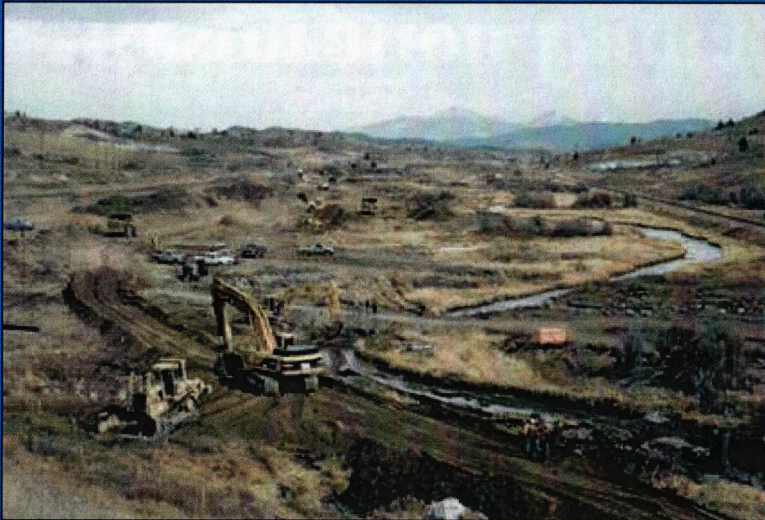




# Superfund (CERCLA /CECRA) and OPA Laws

## Remediation

- Hazardous substances are cleaned up to protective levels
  - Human health
  - Environment
- Goal is not to restore environment, although that may be a by-product of remedy



## NRD Restoration

- Picks up where remediation leaves off
  - Goal: To restore injured natural resources to baseline conditions
  - Damages recovered must be used to restore or replace injured resources





# Damages that may be Recovered

- **Restoration Damages**— Cost to restore the injured natural resources, and their habitats, to baseline conditions
- **Compensable Damages**— To compensate the public for their lost uses (recreation) and lost non-use values (cv)



## Major NRD Settlements in Montana

September 2017 update

Year	Area	NRD Recovered by Montana for Restoration (\$ millions)	Cashout of Remediation Claims Recovered by DEQ and/or EPA (\$ millions)
1999	Upper Clark Fork Basin – I	\$144 (incl. \$2 land)	\$86 (Silver Bow Creek)
2005	Milltown Dam and Sediment Removal	\$13 (cash and other value)	\$100 (estimate)
2008	Upper Clark Fork Basin – II	\$72.5	\$96.5 (Clark Fork River)
2009	Upper Blackfoot River/Mike Horse Dam	\$8	\$43
2009	East Helena	\$8 (incl. \$2 land)	\$115 (Remedy, plus some NRD restoration possible.)
2016	2011 Yellowstone River Oil Spill	\$12	No Cashout – Remediation Completed by Exxon-Mobile
<b>Totals</b>		<b>\$260 million</b>	<b>\$440.5 million</b>



# 1999 Montana v ARCO Partial Settlement and Consent Decree

## Montana Received \$144 million in NRD

- \$15 million for assessment and litigation costs
- \$129 million for damages – deposited into UCFRB NRD Restoration Fund (inc. \$3.2M Wetland funds)
- **Plus \$86 million for SBC remedy**
- **Total: \$230 million**
- Tribes/USDOJ, combined, also received \$20 million
- **Did not settle NRD Restoration claims for 3 sites** (CFR, Smelter Hill Uplands, Portions of Butte)



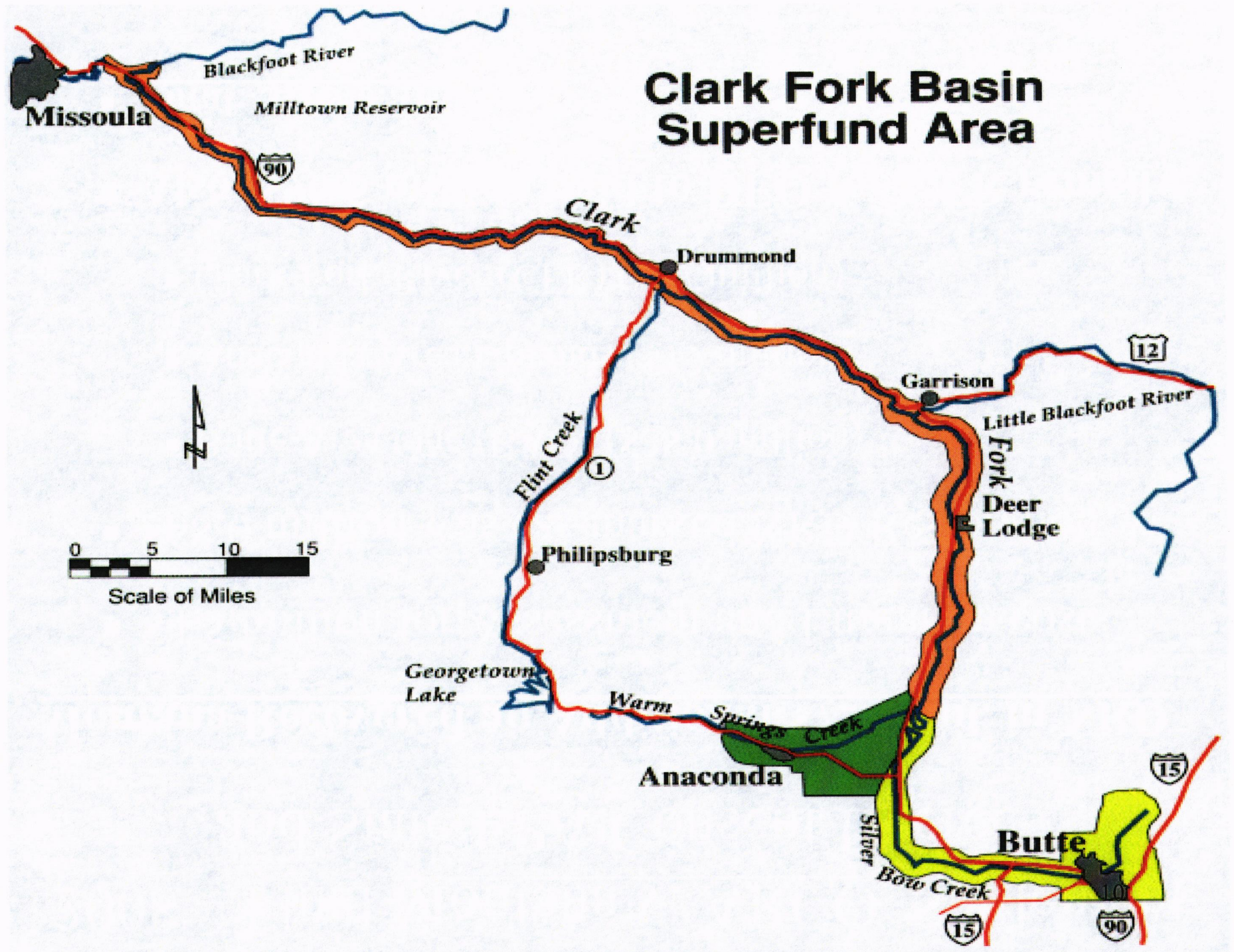
# 2008 – Final Montana v. ARCO Settlement and State/EPA Consent Decree

## Montana Recovered an Additional \$72.5 mil. in NRD

- \$4.5 million for Assessment and Litigation costs
- \$68.0 million was ear-marked NRD Restoration At:
  - Butte Area One (BAO) (\$28.0 million)
  - Anaconda Area Uplands (\$13 million)
  - Clark Fork River (CFR) (\$27 million)
- **Also, \$96.5 million paid to DEQ for CFR remedy**
- **Total: \$169.0 Million**



# Clark Fork Basin Superfund Area





## Upper Blackfoot Mining Complex (UBMC)/ Mike Horse Joint NRDP/DEQ Cleanup

- DEQ, NRDP and USFS clean-up agreement
  - State holds money (\$40.5 M) and manages clean-up
  - DEQ lead on remedy, NRD lead on restoration
- MOA: DEQ/NRDP to jointly manage clean-up
- 2009: Clean-up Started
- 2020: Projected finish



# Conceptual Restoration Plan for the Upper Blackfoot Mining Complex

## Restoration of the Stream and Floodplain Ecosystem



### Prepared For

Montana Department of Justice  
Natural Resource Damage Program  
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PO Box 201425  
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# East Helena Combined NRD/Remedy Settlement

Settlement: \$99 M (EPA remedy) and  
\$5.9 M and 232 acres (NRDP Restoration)

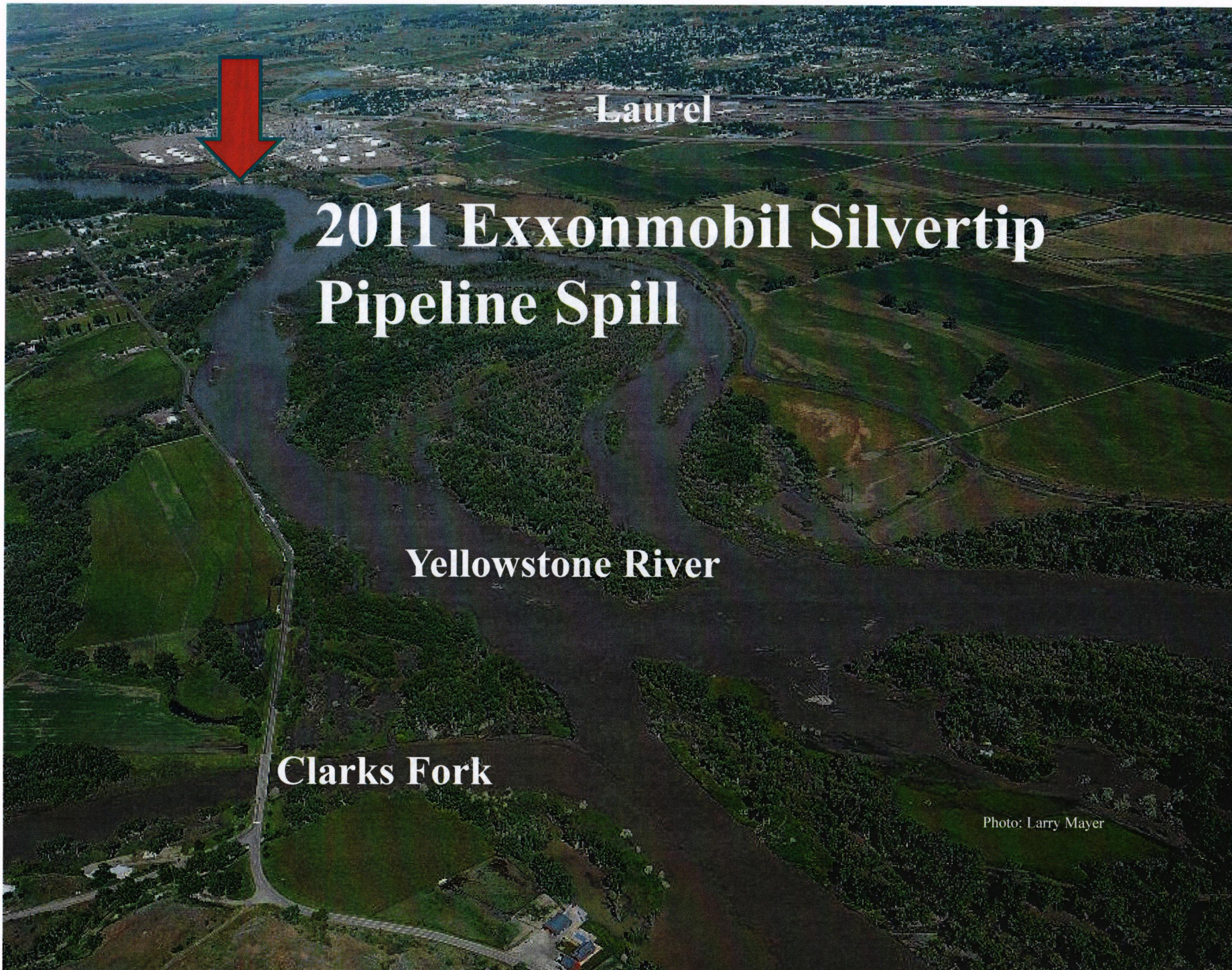




# ExxonMobil July 1, 2011 Yellowstone River Oil Spill

- \$12 million settlement
  - \$9.5 million State funds
  - \$2.5 million Federal funds
- Remediation completed by ExxonMobil 2012
- State Restoration Settlement 2016
- Restoration Plan implementation 2018





Laurel

# 2011 Exxonmobil Silvertip Pipeline Spill

Yellowstone River

Clarks Fork

Photo: Larry Mayer



# Damage Categories and Funding Allocation for Natural Resource Injuries

Damage Category	Funding Allocation
Terrestrial/riparian habitat (includes habitat restoration for cavity nesting birds)	\$3,560,000
Large woody debris piles	\$2,090,000
Riverine aquatic habitat	\$2,640,000
Birds – American white pelican	\$400,000
Recreational human use	\$2,410,000
Planning	\$900,000
Total	\$12,000,000



# Other Natural Resource Damage Assessment Sites

- 2015 Yellowstone River Oil Release
- Smurfit-Stone
- Columbia Falls Aluminum
- Libby Asbestos
- Barker-Hughsville (Belt Creek)
- BN Livingston
- others



# NRDP Restoration Plans Implementation

- Butte Area One
- Anaconda Area Uplands Restoration/Remedy
- Clark Fork River Aquatic and Riparian
- Milltown Restoration Plan
- UCFRB Groundwater Restoration (Butte/Anaconda)
- UCFRB Aquatic Resources
- UCFRB Terrestrial Resources
- Upper Blackfoot Mining Complex
- Yellowstone River 2011
- East Helena



Thanks / Questions

